IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

OP.No. 8054 of 2003(H)

PETITIONER:

RANI P.JOHN, H.S.A (SS) (UNDER ORDERS OF REMOVAL FROM SERVICE), ST.ANTONY'S HIGH SCHOOL, KACHERIPADY.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.),
SRI.R.SREERAJ,
SRI.M.R.HARIRAJ,
SMT.T.M.RESHMY,
SMT.VINEETHA B.

RESPONDENTS:
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1. **CORPORATE MANAGEMENT OF THE TERESIAN CARMALITE SISTERS OF ERNAKULAM, ST.TERESA'S CONVENT, ERNAKULAM, REPRESENTED BY THE MANAGER.**

2. **HEADMISTRESS, ST.ANTONY'S HIGHER SECONDARY SCHOOL, KACHERIPPADY.**

3. **DISTRICT EDUCATION OFFICER, ERNAKULAM.**

O.P. NO. 8054/2003:

4. DIRECTOR OF PUBLIC INSTRUCTION,
TRIVANDRUM.

5. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF EDUCATION, TRIVANDRUM.

BY ADV. SRI.K.SASIKUMAR FOR R1,
SRI.ASOK M.CHERIAN FOR R2,
GOVERNMENT PLEADER SMT. N. SUDHA DEVI FOR R3 TO R5.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD 14/08/2007, THE COURT ON 23/08/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 14054/2003 IN O.P. NO. 8054/2003

DISMISSED

23/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DATED 12/08/2001 ISSUED BY THE R.1.

EXT.P.2: COPY OF THE ORDER NO. B2-10597/01 DTD. 09/08/2001 ISSUED BY THE R.3.

EXT.P.3: COPY OF THE MEMO OF CHARGES DTD. 27/08/2001 ISSUED BY THE R.1.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 13/09/2001 SUBMITTED BY THE PETITIONER TO THE R.1.

EXT.P.5: COPY OF THE REPRESENTATION DTD. 01/04/2002 MADE BY THE PEITIONER TO THE R.4.

EXT.P.6: COPY OF THE ORDER NO. ET4-72828/01 DTD. 04/04/2002 ISSUED BY THE R.4.

EXT.P.7: COPY OF THE REVIEW PETITION DTD. 18/04/2002 FILED BY THE PETITIONER.

EXT.P.8: COPY OF THE G.O. (RT). NO. 2177/2002/G1.EDN. DTD. 17/07/2002 ISSUED BY THE R.5.

EXT.P.9: COPY OF THE NOTICE DTD. 18/04/2002 ISSUED BY THE MANAGER, DISCIPLINARY AUTHORITY TO THE PETITIONER.

EXT.P.10: COPY OF THE REPRESENTATION DTD. 20/05/2002 MADE BY THE PETITIONER TO THE R.1.

EXT.P.11: COPY OF THE REPRESENATION DTD. 07/08/2002 MADE BY THE PETITIONER.

EXT.P.12: COPY OF THE NOTICE NO. B1-9125/2002 DTD. 08/08/2002 ISSUED BY THE DEPUTY DIRECTOR.

EXTP.13: COPY OF THE REPRESENTATION DTD. 23/08/2002 MADE BY THE PETITIONER TO THE R.4.

EXT.P.14: COPY OF THE TELEGRAM DTD. 25/08/2002.

EXT.P.15: COPY OF THE LETTER NO. TS/DP/02 DTD. 03/09/2002 ALONG WITH THE ENCLOSURES.

O.P. NO. 8054/2003:

EXT.P.16: COPY OF THE DETAILED REPRESENTATION DTD. 10/09/2002 MADE BY THE PETITIONER.

EXT.P.17: COPY OF THE ORDER NO. TS/DP/2002 DTD. 11/09/2002 OF THE R.1.

EXT.P.18: COPY OF THE APPEAL DTD. 20/09/2002 MADE BY THE PETITIONER BEFORE THE R.4.

EXT.P.19: COPY OF THE JUDGMENT DTD. 01/11/2002 IN O.P. 32248/2002 ON THE FILE OF THIS HONOURABLE COURT.

EXT.P.20: COPY OF THE ORDER NO. ET4/153061/2002/DIS. DTD. 02/01/2003 OF THE R.4.

EXT.P.21: COPY OF THE LETTER DTD. 19/10/2002 ISSUED FOR LOTUS LEARNING PVT. LTD.

EXT.P.22: COPY OF THE JUDGMENT DTD. 01/03/1996 IN O.P. 1167/96 ON THE FILE OF THIS HONOURABLE COURT.

EXT.P.23: COPY OF THE REPRESENTATION DTD. 14/05/2002 MADE BY THE PETITIONER.

RESPONDENT'S EXHIBITS:

EXT.R1.A: COPY OF THE NOTICE DTD. 24/09/2001.

EXT.R1.B: COPY OF THE LETTER DTD. 25/03/2002.

EXT.R1.C: COPY OF THE STATEMENT OF THE PETITIONER.

EXT.R1.D: COPY OF THE LETTER DTD. 01/06/2002.

EXT.R1.E: COPY OF THE JUDGMENT IN O.P. 12677/2002 DTD. 10/05/2002.

EXT.R1.F: COPY OF THE ORDER DTD. 31/08/2002.

EXT.R2.A: COPY OF THE STATEMENT SUBMITTED BY THE PETITIONER BEFORE DISTRICT EDUCATIONAL OFFICER, DTD. 30/03/2002.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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O.P.NO.8054 of 2003-H

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Dated this the 23rd day of August, 2007

JUDGMENT

This original petition is filed challenging the orders Exts.P17 and P20 by which the petitioner has been imposed a major penalty of removal from service as H.S.A. (Social Science), which has been confirmed in appeal by the Director of Public Instruction. The short facts leading to the case are the following:

2. Ext.P1 is the order of suspension dated 2.8.2001 passed by the management. The District Educational Officer as per Ext.P2, granted sanction for continuance of suspension beyond 15 days under Rule 67(8) of Chapter XIV-A K.E.R. Ext.P3 is the memo of charges dated 27.8.2001 and Ext.P4 is the explanation to the same. The petitioner had challenged the issue relating to suspension before the Director of Public Instruction and the matter was posted for hearing on 12.9.2001. At that time, the P.T.A. Filed O.P.No.26646/2001 challenging the said proceedings and accordingly the matter was adjourned. After the disposal of the original petition, the matter was posted on 4.4.2002 for hearing. Thereafter, she was served with a notice on 29.3.2002 to appear for the enquiry to be conducted by the

District Educational Officer on 30.3.2002. It is averred that apart from Ext.P3 charge memo, no other documents relied on by the management to support the charges or list of witnesses have been served on her.

3. The petitioner has stated in paragraph 8 the details regarding her version of the manner in which the enquiry was conducted and the sum and substance of the same is that no witness was examined in her presence and no opportunity was given to cross examine the witnesses and she was not permitted to adduce any evidence also. Ext.P5 is the representation submitted by her to the 4th respondent on 1.4.2002 pointing out the absence of a proper enquiry. On 4.4.2002 during the hearing before the Director of Public Instruction, the District Educational Officer had produced the copy of the enquiry report and hence the Director of Public Instruction, by Ext.P6 directed finalisation of the disciplinary proceedings within a period of one month from the date of receipt of a copy of the order. The Director of Public Instruction did not go into the validity of the order of suspension in view of the fact that the detailed enquiry is already over. Ext.P7 is a petition filed as review by the petitioner before the Secretary to Government. Ext.P8 is the order rejecting her representation by the Government.

4. The petitioner was thereafter issued with Ext.P9 show cause notice

by the management proposing punishment of removal from service which was responded by the petitioner by submitting Ext.P10 and subsequently by Ext.P11. While so, the management moved for sanction for imposing the punishment before the Deputy Director of Education who conducted a personal hearing based on Ext.P12 notice. Apprehending bias on the part of the Deputy Director of Education, the petitioner filed Ext.P13 representation before the Director of Public Instruction and requested for an adjournment of the personal hearing till a decision is taken on the representation. While so, by Ext.P15, she was served with the copy of the enquiry report along with copies of written statements received at the time of enquiry. She submitted her objections by Ext.P16. Thereafter, by Ext.P17, the punishment was imposed and she challenged the same by Ext.P18 before the Director of Public Instruction. Since no action was taken on it, she approached this court by filing O.P.No.32248/2002 which was disposed of by Ext.P19 judgment directing the Director of Public Instruction to pass orders on Ext.P18. Ext.P20 is the resultant order rejecting her appeal.

5. Learned counsel for the petitioner submitted that the entire enquiry is vitiated for non observance of the principles of natural justice and for violation of the relevant rules of Chapter XIV-A K.E.R. governing the procedure for conduct of enquiry. The submission is elaborated that the

enquiry was scheduled to be held on 30.3.2002 in a hurried manner as the Director of Public Instruction was to hear the challenge against the suspension on 4.4.2002 and the attempt by the enquiry officer was to prevent a decision on the merits of the suspension by hurrying the enquiry itself. It is stated that she was not furnished with any documents which the management relied upon in the enquiry, that even though statements have been taken from 16 persons, no list of witnesses have been furnished to her and these statements which those persons gave in writing, were not furnished to her at that time for enabling her to cross examine the witnesses and finally, she was not allowed to adduce any evidence, as the enquiry was closed on that day itself. It is also pointed out that a reading of the Enquiry Report will reveal that the enquiry was conducted totally in violation of Rule 75 of Chapter XIV-A K.E.R., that proceedings have not been recorded and documents received have not been mentioned or indexed. The discussion made in reference to the charges shows total non-application of mind also.

6. It is further contended that before accepting the enquiry report no hearing was conducted by the management on its acceptability which is mandatory in the light of the principles stated by the Supreme Court in **Managing Director, E.C.I.L. v. B. Karunakar** ((1993) 4 SCC 727).

7. The contesting respondents, viz. respondents 1 and 2 have filed their counter affidavits supporting the action. It is reiterated in the counter affidavits that the enquiry as conducted by the District Educational Officer is perfectly in order and there is no violation of the principles of natural justice, as there was compliance with the procedure given in the rules for conducting the enquiry. It is averred in the counter affidavit filed by the first respondent that the statements of witnesses have been taken in the presence of the teacher. She submitted her statement of defence before the enquiry officer at the conclusion of the enquiry which is marked as Ext.R1 (c). It is also stated that every opportunity was given to the petitioner during the course of enquiry and her submission as (Ext.R1(c) shows that.

8. The question therefore, to be considered, is whether the enquiry was conducted in accordance with the principles of natural justice and whether the action resulting in the punishment is vitiated by non compliance with the same. The rules governing the same are contained in Chapter XIV-A of the K.E.R. Rule 75 provides for the procedure for imposing major penalties. Sub-rule 6 which is important, is extracted below:

> "(6) The Inquiring Authority shall, in the course of the inquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The teacher shall be entitled to cross examine witnesses examined in support of the charges and to give evidence in person and to have such

> witnesses as may be produced, examined in his defence. The person presenting the case in support of the charges shall be entitled to cross examine the teacher and the witnesses examined in his defence. If the Inquiring Authority declines to examine any witness on the ground that his evidence is not relevant or material it shall record its reason in writing.
>
> **Note:-** If the Inquiring Authority proposes to rely on the oral evidence of any witness the authority should examine such witness in the presence of the teacher and give an opportunity to cross-examine the witness."

Going by sub-rule 8, after the conclusion of the enquiry, the enquiring authority shall prepare a report of the enquiry recording its findings on each of the charges together with the reasons therefore. Sub-rule 9 stipulates the materials which would be placed in the records of enquiry. Item (iii) is oral evidence taken in the course of enquiry, item (iv) is the documentary evidence considered in the course of the enquiry; item (v) is the orders; if any; made in regard to the enquiry; and item (vi) is the report setting out the findings on each charges and the reasons therefore.

9. Going by sub-rule 6, the enquiring authority is bound to take oral evidence as may be relevant or material in regard to the charges and according to the same, the teacher shall be entitled to cross examine the witnesses examined in support of the charges and to give the evidence in person and to have such witnesses as may be produced, examined in his defence. The person presenting the case in support of the charges shall be

entitled to cross examine the teacher and the witnesses examined in his defence.

10. The next question is whether the enquiry officer has followed the above provisions while conducting the enquiry in this case. The District Educational Officer has not filed any counter affidavit and the learned Govt. Pleader has made available the records of the enquiry. The records show that the notice proposing the enquiry on 30.3.2002 is dated 22.3.2002. It is titled as "hearing notice". The same is reproduced below:

> " As per the directions received from the Director of Public Instructions on 22.3.2002 the undersigned is decided to complete the enquiry vide reference cited. Hence the enquiry is posted for hearing on 30.3.2002 at 10.30 at St. Antony's H.S., Kacherippady. You are requested to present for the hearing in time with necessary supporting documents substantiating your claim."

The subject shown is – Education – Suspension – Smt. Rani P. John, HSA, St. Antony's HSS, Ernakulam. Going by the notice, it is evident that the date of enquiry has been fixed as 30.3.2002 as per the directions received from the Director of Public Instruction. What is required is that the parties have to "present for the hearing" on that day. It is evident that nothing is stated about the steps for taking oral evidence, if any, to substantiate the charges. Therefore, the complaint of the petitioner that no witness schedule or list of documents have been attached along with the notice, is correct.

She was not asked to produce list of witnesses or present those witnesses. The notice for the hearing proposed to be conducted on 4.4.2002 by the Director of Public Instruction in respect of the matter pending before him, is also seen dated 22.3.2002 which is kept in the file of the District Educational Officer.

10. The enquiry report shows the following matters:- What is recorded therein in relation to the proceedings dated 30.3.2002 is that "the following persons, who are said to have involved in this case, were heard in person at the time of hearing scheduled at 10.30 a.m. in the school" and a list of 17 persons including the petitioner, the manager of the school, the Principal, the Senior Assistant, P.T.A. President, teachers, pupils and parents are given. It also shows that there was no presenting officer for the management. The charges are given by way of an extract of one charge without stating all them in full. It is then recorded that the enquiry officer was satisfied that what is stated above are true and faithful on the basis of the "statements filed by eye witnesses under serial Nos.1 to 15 except serial Nos.2 and 5." The statements individually given by the said persons with their signatures are also kept in the file. The handwriting on those are different evidently because it appears that written statements have been received from the said persons. Thus, it is a clear case where sub-rule 6 has

been violated by the District Educational Officer by not taking any oral evidence and allowing the teacher to cross examine the witnesses. Even though it is stated in the report that he has allowed the petitioner to cross examine witnesses but she failed to establish her innocence, the same is not an opportunity given to cross examine the witnesses whose oral evidence have been taken. There is nothing to show that the written statements received from the said 15 persons have been read over to the petitioner and she was allowed an opportunity to cross examine those witnesses, even though according to me, the same is not the prescribed procedure. The question of cross examination arises only if a chief examination is taken, going by sub-rule 6 of Rule 75. Therefore, it is a clear case where there is total violation of the mandatory procedure contained in sub-rule 6 of Rule 75. The petitioner is right in submitting that she was surprised by the method adopted by the District Educational Officer by way of taking written statements from various persons. Even though in the report it is stated that the petitioner has given an oral counter statement disputing the correctness of the allegations, that "oral counter statement" is not seen recorded and is not part of the records of enquiry. (Reference to the said oral statement is available in other parts of the report also.)

11. The report shows that the Principal had shown attendance

register and other records for establishing that the teacher is in the habit of late coming always and the teacher often refused to acknowledge the memo circulated by the Principal in this regard. It is to be noticed herein that the list of documents have not been supplied to the petitioner and the attendance register and "other records" (details of which are not mentioned) have not been itemized or marked also. This itself shows the clumsy way in which the enquiry was conducted. Thereafter in the next paragraph what is recorded is that he had cross examined the pupils of Standard XD and that they have the same and concrete opinion that their social science teacher (Smt. Rani P. John) is in the habit of leaping portions of subjects assigned to her. This shows that the exercise conducted by the District Educational Officer was to "cross examine them" without allowing the petitioner to cross examine those pupils. This is a gross irregularity and he was not expected to cross examine the witnesses in such a manner. Further, the names of those pupils who had been cross examined by him, is also not stated in that paragraph. Apparently what has been attempted by the District Educational Officer is just to enquire orally with those pupils and rely on those information in the report which is far from satisfactory and which is totally contrary to the well established principles in conducting disciplinary enquiry. In the same paragraph in various parts it is again

repeated referring to the statements of certain pupils, against the petitioner. It is ultimately concluded that "parents as well as pupils are not willing to accept such directions of the teacher during school days (statement filed No.10)" This also shows that he is relying upon the written statement received from somebody whose name is not disclosed, for arriving at the conclusion. There is reference to oral statement by the petitioner in the succeeding paragraphs also but such oral statements have not been recorded in writing. Thus, it is a case where the report is based on surmises and conjectures based on informations probably collected from the students, parents or teachers during discussion with them by the District Educational Officer, even though it might have been in the presence of the teacher. Therefore, the allegations raised in paragraph 8 that no proper enquiry was conducted by the District Educational Officer is clear from the records of the enquiry.

12. It is also evident from the report that the way in which the report has been finalised, is far from satisfactory. The first thing to be noticed is that the memo of charges containing each one of the charges have not been reproduced there. There is no reference to the evidence collected in respect of each of the charges, discussion of the evidence and the findings in respect of each one of the charges which going by sub-rule 9(6), is required

to be part of the records of enquiry. On an over all reading of the report, it shows that the District Educational Officer has only recorded his impressions which might have been received from the statements given in writing by the pupils. Even the contents of the statements have not been discussed and the evidence, if any, submitted by the management have also not been referred to in support of the finding that the charges stood proved. All these shows that the enquiry is totally vitiated and the report itself is thus unacceptable for proceeding further in the matter. The report does not contain any mention about an opportunity given to the petitioner to produce witnesses or submit documents in respect of her defence. It shows that the entire thing was completed on 30.3.2002 and the report itself is dated 30.3.2002. All these things are drawn to be produced before the Director of Public Instruction on 4.4.2002 which was also done as seen from the order passed by the Director of Public Instruction, viz. Ext.P6. It may also be mentioned herein that in the report there is a further recommendation by the District Educational Officer that the petitioner deserves maximum punishment.

13. In Ext.P6 order passed by the Director of Public Instruction also, it is recorded while referring to the enquiry report submitted by the District Educational Officer that the District Educational Officer has arrived at those

findings based on the "statements filed by the eye witnesses." Therefore, obviously no oral evidence was taken. Learned counsel for the petitioner invited my attention to Ext.P17 order passed by the manager imposing punishment. In paragraph 6 of the order it is stated that "there are 1 – 20 statements referred in the Report of Enquiry speaking against Mrs. Rani P.John." In Ext.P15 enquiry report, the list of persons given are only 17. Therefore, as to how there could have been 20 statements, is not clear. It is pertinent to note that the petitioner submitted Ext.P7 complaint about the illegalities of the disciplinary enquiry. In fact, she had been taking that stand in the subsequent representations and in the objection before the manager as well as in the appeal filed before the Director of Public Instruction (Ext.P18).

14. The stand taken by the contesting respondents in regard to this aspect has also to be examined in the light of the above clear facts and circumstances relating to the conduct of enquiry. In the counter affidavit filed by the first respondent, as mentioned already, the stand taken is that the enquiry conducted is in accordance with the principles of natural justice and that in Ext.R1(c), the petitioner has not complained of any irregularity. A reading of Ext.R1(c) shows otherwise. In the light of the clear circumstances revealed, the argument that the enquiry was conducted

properly, is not correct. Even if in Ext.R1(c) she had not raised anything about the defective enquiry, in the objection to the punishment proposed as well as in Ext.P7 and in the appeal, she has clearly stated these facts. There cannot be any waiver or acquiescence of the right of the petitioner to be served the list of witnesses, documents relied on in the enquiry and the right to defend her case by adducing evidence.

15. Another aspect that is pointed out in the counter affidavit filed by the first respondent in paragraph 19 is that the petitioner could have, at the time of disposal of Ext.P6 by the 4th respondent, submitted her own documents/witnesses. In fact, 4th respondent was only hearing the issue regarding suspension at that time. Therefore, the validity of the enquiry was not at all a matter which was in dispute at that time and further, as the 4th respondent was not the enquiring authority, there is no question of petitioner examining witnesses before the 4th respondent. Therefore, the said stand taken in the counter affidavit of first respondent is also not correct. Even in the counter affidavit in paragraph 16, the stand taken is that the statements, viz., the written statements were taken in the presence of the petitioner and therefore she cannot complain of want of opportunity. But going by the rule, what is contemplated is taking of oral evidence with opportunity for the teacher to cross examine the witnesses. In the absence

of list of witnesses or documents and receipt of statements by the District Educational Officer in the presence of the petitioner will not cure the irregularity. The counter affidavit by the second respondent is also on the same lines.

16. Learned counsel for the respondents pointed out that in Ext.P8 order passed by the Government, there is an observation that the enquiry was conducted as per the provisions of the K.E.R. and the petitioner was given ample opportunity to defend herself. It was also argued that since the report of enquiry was forwarded for further action, the proceedings were finalised based on the report, and there is no illegality in it. Judged in the light of the circumstances pointed out by me earlier, it is clear that the Government has not considered the matter in the right perspective. The said observation therefore has no value. Learned counsel for the petitioner invited my attention to the decision of the Division Bench of this court in **Radhamma v. Thulasi Bai** (2006 (3) KLT 909) wherein it was held that when the report of the enquiring authority is bad due to procedural irregularities, the disciplinary proceedings by the manager against the delinquent teacher do not succeed. A reference to paragraph 7 of the judgment shows that the enquiry was conducted by the Deputy Director exactly in the same manner by obtaining statements from 7 persons and

submitting a report that the charges are proved. Their Lordships, in paragraph 8 of the judgment held in the following terms:

> "8. Enquiry report can be drawn by an inquiring authority, after conducting a formal enquiry as envisaged in R.75 Chapter XIV-A KER. For that, the witnesses in support of the charges have to be examined and the delinquent has to be given an opportunity to cross examine the said witnesses. Ext.P6 does not reveal that such proceedings had been conducted with due opportunity to the delinquent to cross examine any of the persons fro whom the Deputy Director collected statements. More over, R.75(9)(vi) reveals that the report of inquiry shall contain finding on each of the charges leveled against the delinquent concerned with supporting reasons for the findings. Ext.P6 does not contain any finding at all on any count of the charges, much less the supporting reasons. Necessarily, there was no proper enquiry. There was thus no report of an enquiry to enable the manager to proceed further by issuing a show cause notice and thereafter to impose a penalty."

I respectfully follow the same and in view of the similar circumstances here, what follows is that Ext.P17, which is confirmed by the appellate order Ext.P20 are illegal and the punishment imposed is also liable to be set aside.

17. Relying upon the decision of the Supreme Court in **Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others** ((1993) 4 SCC 727), learned counsel for the petitioner contended that before issuing the show cause notice proposing the punishment, the copy of the enquiry report was not furnished and therefore before the disciplinary authority decided to accept the report, the petitioner was not given any

opportunity to object. Learned counsel therefore submitted that for this reason also, the entire action is bad. In the light of the view I have taken that the enquiry itself is vitiated resulting in setting aside the punishment itself, it is not necessary to finally pronounce upon the said issue here.

18. Learned counsel for the petitioner placed reliance upon the decisions of the Supreme Court in **South Bengal State Transport Corporation v. Sapan Kumar Mitra and others** ((2006) 2 SCC 584) and **State of M.P. v.Chintaman Sadashiva Waishampayan** (AIR 1961 SC 1623), to contend for the position that the petitioner was entitled to be supplied the documents relied upon by the management before commencement of the enquiry itself. It is pointed out that along with the memo of charges, no documents have been furnished and till the date of enquiry also, nothing was communicated to her about the documents which are proposed to be relied upon in the enquiry. Learned counsel therefore submits that this is also a vitiating factor as far as the entire enquiry is concerned. With regard to the said legal issue, their Lordships held in paragraph 11 of the judgment in (2006) 2 SCC 584 that "it cannot be disputed that serious prejudice would be caused to respondent No.1 if the documents on which reliance was placed by the authorities in removing him

from service were not supplied to him. This will cause denial of reasonable opportunity of hearing to him." In this case, as noticed already, no list of witnesses was given, nor copies of documents were furnished on the day of the enquiry or prior to that and the documents relied upon by the enquiry officer, have not even been shown to the petitioner evidently, during the enquiry as there is no reference of any such action taken by the District Educational Officer in the enquiry report. Therefore, it is a case where there is denial of reasonable opportunity of hearing to the petitioner. It is a facet of principles of natural justice that nobody can be condemned unheard. The principles of natural justice have been enshrined in Rule 75 of Chapter XIV-A K.E.R.. The above rules are mandatory in nature and when procedural rules are violated which are mandatory and prejudice is shown to the party concerned, the resultant action is vitiated. No plea that there is substantial compliance with the principles of natural justice can also be entertained in such circumstances. In AIR 1961 SC 1623, a Constitution Bench of the Supreme Court considered the requirements of reasonable opportunity to defend at the stage of departmental enquiry and the effect of violation of the principles of natural justice. It was held therein that:

> "Stating it broadly and without intending it to be exhaustive it, may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he

> relies, that the evidence of the opponent should be taken on his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no , materials should be relied on against him without his being given an opportunity of explaining them. The right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with rules of natural justice."

The said principle applies here on all fours.

19. Judged in the light of the decision of the Division Bench in 2006 (3) KLT 909, it is clear that the relevant rules of Rule 75 in regard to the procedure for conducting enquiry is mandatory and they have been adopted to safeguard the principles of natural justice. Hence, the contentions raised by the respondents in their counter affidavits that there had been compliance of the principles of natural justice, do not stand in the eye of law. In Ext.P20, none of the relevant aspects have been considered.

For all these reasons, I allow the original petition. Exts. P17 and P20 are quashed. The petitioner is directed to be reinstated in service with continuity of service and other benefits except back wages. It will be open to the management to take steps to conduct fresh enquiry as permissible

under law and the claim for back wages will depend upon the result of any such enquiry. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P. No.8054 of 2003

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JUDGMENT

23rd August, 2007.